

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 1657 – HB 2417

March 28, 2014

SUMMARY OF BILL: Broadens the list of crimes for which a judge may grant the interception of electronic communications for evidence.

ESTIMATED FISCAL IMPACT:

On February 3, 2014, a fiscal note was issued with an estimated fiscal impact as follows:

*Increase State Expenditures – \$1,175,800/Incarceration**

Upon receiving further information, Fiscal Review staff determined that this impact was in error. The estimated impact is:

(CORRECTED)

Increase State Expenditures – \$547,900/Incarceration*

Assumptions:

- Under current law, the only law enforcement officers that can obtain wiretap warrants are TBI agents and law enforcement officers in counties having a population in excess of 250,000 and who have completed the necessary training course.
- The only counties with a population over 250,000 are Davidson, Shelby, Knox, Hamilton, and Rutherford.
- A judge may only grant interception of electronic communications for evidence of homicide, conspiracy, certain major drug crimes, and criminal gang offenses.
- The proposed legislation adds nine new offenses to the list: trafficking for commercial sex acts, promoting prostitution, patronizing prostitution, especially aggravated sexual exploitation of a minor, solicitation of a minor, soliciting sexual exploitation of a minor/exploitation of a minor by electronic means, kidnapping, aggravated kidnapping, and especially aggravated kidnapping.
- According to the TBI these new offenses are being included to combat the rise in human sex trafficking in Tennessee. According the TBI's report, The Geography of Trafficking in Tennessee 2013, human sex trafficking is particularly high in 13 counties, which include the five that can apply for wiretap warrants.
- According to the same report, most human sex trafficking is conducted over the internet and there is "little doubt that as technology evolves, so will the use of the World Wide

SB 1657 – HB 2417 (CORRECTED)

Web, smartphones, and social media in the promotion of the human trafficking enterprise.” For this reason, wiretap warrants will become a key investigative tool to combat human sex trafficking.

- It is assumed that the bill will increase admissions for these offenses by five percent.
- Trafficking for commercial sex acts and patronizing prostitution had too few admissions to be affected by this bill.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2014 is \$66.29.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of the proposed legislation.
- Promoting prostitution has a ten-year average of 7.3 admissions per year. The proposed legislation will result in one additional admission every three years.
- Promoting prostitution is a Class E felony. The average time served for a Class E felony is 1.31 years.
- A recidivism discount of 32.03 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 1.31 years (478.48 days) for an annualized total of \$10,572.81 $[(\$66.29 \times 478.48 \text{ days}) / 3]$.
- Especially aggravated sexual exploitation of a minor has a ten-year average of 4.2 admissions per year. The proposed legislation will result in one additional admission every five years.
- Especially aggravated sexual exploitation of a minor is a Class B felony. The average time served for a Class B felony is 5.60 years.
- A recidivism discount of 48.29 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 5.60 years (2,045.40 days) for an annualized total of \$27,117.91 $[(\$66.29 \times 2,045.40 \text{ days}) / 5]$.
- Solicitation of a minor has a ten-year average of 5.7 admissions per year. The proposed legislation will result in one additional admission every three years.
- Solicitation of a minor is punished at one classification lower than the offense that was solicited. It is assumed that the one additional admission each year will be punished as a Class E felony.
- The average time served for a Class E felony is 1.31 years.
- A recidivism discount of 32.03 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 1.31 years (478.48 days) for an annualized total of \$10,572.81 $[(\$66.29 \times 478.48 \text{ days}) / 3]$.

- Solicitation for sexual exploitation of a minor/exploitation of a minor by electronic means has a ten-year average of 2.6 admissions per year. The proposed legislation will result in one additional admission every eight years.
- A recidivism discount of 48.29 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every eight years serving an additional 5.60 years (2,045.40 days) for an annualized total of \$16,948.70 [(\$66.29 x 2,045.40 days) / 8].
- Kidnapping has a ten-year average of 30.9 admissions per year. The proposed legislation will result in two additional admissions each year.
- Kidnapping is a Class C felony. The average time served for a Class C felony is 2.98 years.
- According to the DOC, 48.29 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.29 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .4829 = 0.97 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving 2.98 years (1,088.45 days) for a total of \$72,153.35 (\$66.29 x 1,088.45 days).
- Aggravated kidnapping has a ten-year average of six admissions per year. The proposed legislation will result in one additional admission every three years.
- Aggravated kidnapping is a Class B felony. The average time served for a Class B felony is 5.60 years.
- A recidivism discount of 48.29 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 5.6 years (2,045.40 days) for an annualized total of \$45,196.52 [(\$66.29 x 2,045.4 days) / 3].
- Especially aggravated kidnapping has a ten-year average of 29.2 admissions per year. The proposed legislation will result in one additional admission each year.
- Especially aggravated kidnapping is a Class A felony. The average time served for a Class A felony is 15.09 years.
- A recidivism discount of 48.29 percent applies, but due to the low number of admissions added by this provision, the recidivism discount does not impact the incarceration cost for the proposed provision.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 15.09 years (5,511.62 days) for a total of \$365,365.29 (\$66.29 x 5,511.62 days)..
- The total increase in state expenditures is \$547,927.39 (\$10,572.81 + \$27,117.91 + \$10,572.81 + \$16,948.70 + \$72,153.35 + \$45,196.52 + \$365,365.29).

- The bill would also increase the number of warrants applied for by the District Attorneys General Conference. The nine offenses added account for 86.4 admissions each year; 90.72 admissions with the five percent increase that the proposed legislation will result in. That is three additional warrants per judicial district. It is assumed that the increase can be accommodated within existing resources.
- According to the District Public Defenders Conference, the proposed legislation will not have a significant impact on their caseload. Any impact can be accommodated within existing resources.
- According to the Administrative Office of the Courts, the bill will not have a significant impact on their caseload. Any impact can be accommodated within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

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